Mrs. BOXER. Mr. President, I rise in opposition to the Enzi resolution. If enacted, this resolution would prohibit the National Labor Relations Board, NLRB, from implementing commonsense, straightforward changes to the union representation process that will ensure union elections are conducted in a more fair and efficient manner.

The new rules, which will go into effect on April 30, will make it easier and less burdensome for workers and employers to navigate the union election process.

Workers and employers will now be able to electronically file election petitions and other documents. Timely information essential to both sides being able to fully engage in the election process will be shared more quickly. Timeframes for parties to resolve issues before and after elections will be standardized. Duplicative appeals processes that cause unnecessary delays will be eliminated. Both sides will be required to identify points of disagreement and provide evidence at the outset of the election process, helping to eliminate unnecessary litigation.

The modest reforms proposed by the NLRB do not mandate timetables for elections to occur, as some of my colleagues will allege; rather, the new rules simply eliminate existing barriers that get in the way of providing employees and employers with access to an open and fair election process. As Catholic Healthcare West, which employs most of its 31,000 workers in my State of California, wrote during the public comment period: ''[the] reforms proposed by the NLRB are not pro-union or pro-business, they are pro-modernization.''

I urge my colleagues to support modernization and oppose the Enzi resolution.

NLRB ELECTION RULES

Mr. LEVIN. Mr. President, we find ourselves debating yet another effort in the campaign against working men and women in this country. Over and over again in this body, and in State legislatures across the country, some have sought to undermine the ability of their constituents—dedicated teachers, electricians, assembly-line workers, and civil servants, just to name a few—to come together to bargain for fair wages and benefits. The resolution of disapproval before us is just another attempt to weaken unionized labor in this country, and I will not support it.

The representation process we are debating, which is overseen and administered by the National Labor Relations Board—NLRB—is used when a group of workers want to hold a union representation vote or when an employer wants to hold a similar vote to decertify a union.

Now let me be clear. What we are considering is a resolution that would effectively nullify a number of worthwhile rule changes intended to streamline and modernize the process for administering a union representation election. And, if adopted, it would essentially bar the NLRB from promulgating any similar rules in the future.

These changes will help cut down on needless delays that can occur at preelection hearings, eliminate the arbitrary minimum 25 day waiting period following a decision to hold an election, and will clarify the election appeals process. And, the new rules will allow for the use of modern technologies, including email and other forms of digital communication.

The NLRB proposed these amendments last summer, allowed for ample time to consider public comments, and finalized the changes this past December. These are reasonable updates meant to accommodate modern forms of communication and discourage delay tactics that can unfairly stall a representation vote for months on end. The finalized rules will help ensure that the unionization process is fair and timely for employees, employers, and unions. And despite what some of my colleagues have stated, the rules are not encouraging an ''ambush.'' They are encouraging an election. I urge my colleagues to join me in voting against this disapproval resolution.

I yield the floor.

Mr. HARKIN. Mr. President, over the past 2 days my Republican colleagues have raised several arguments about what the NLRB rule will do. I now want to respond to their points and to clarify once again: this is a modest rule that simplifies preelection litigation in the small number of cases where the parties don't reach agreement and must resort to litigation.

First, my colleagues across the aisle have pointed out that unions have recently won about 71 percent of elections, and so, they argue, the current system is completely fair to unions. This is an incredibly deceptive statistic. Unions have filed far fewer petitions in recent years—down from over 4,100 in 2001 to just over 2,000 in 2011. And in almost a third of cases where petitions are filed, the petition is withdrawn before an election. In other words, the process of getting to an election can be so slow, and employer anti-union attacks so potent, that unions are discouraged from going through the entire election process. For the most part, only in the rare cases where support is truly overwhelming or the employer does not oppose the union do unions win.

In a related vein, Republicans have argued that elections are currently held promptly—on average, between 30 and 40 days after a petition is filed—and therefore no change in the rule is needed. But this argument misses the point of the rule. Currently, in the 10 percent of cases that are litigated, it takes around 124 days to get to an election. It takes around 198 days when parties exhaust their appeal rights. This rule addresses those situations where employers engage in excessive—and often frivolous—litigation to slow down the process. Without question, in those cases, it takes far too long and these new NLRB procedures are a desperately needed fix to shorten that time period for the 10 percent of cases that are litigated.

I have also heard the argument that if employers engage in misconduct that interferes with workers' choice during a long election campaign, the NLRB can rerun the election. But the time it takes to get to a second election only compounds the frustration and loss of hope workers suffer when their opportunity to make a choice is delayed for too long. Many unions won't bother to seek a second election, even if there was employer misconduct, if workers are too discouraged.

One of the major improvements in this bill—deferring challenges to voter eligibility until after the election when they are small in number—has also been mischaracterized. Opponents of the rule claim that workers will be confused about who is in the bargaining unit with them. The reality is, challenged voters will be deferred only when they are small in number relative to the size of the bargaining unit. So there will be little or no confusion about the exact individuals in the unit. Moreover, workers will know full well the essential identity of the group they are a part of; individual employees may come and go over time as workers retire or find new jobs, but the identity of the unit is what remains constant. The unit identity is what workers need to know to be able to make an informed choice about whether to vote for a union.

I hear a lot from the other side how this rule will dramatically shorten the time to an election and how it will lead to so-called ambush elections. There is no basis for this prediction. Opponents of the rule can't even agree among themselves how much time the rule will shave off an election. Senator ENZI suggested that this rule will lead to an election in 10 days; Senator BARRASSO suggested it will almost halve the current median time of 38 days. An attorney from the management-side labor law firm Jackson Lewis told the Wall Street Journal that he thinks the time would be between 19 and 23 days. The vice president of the National Association of Manufacturers predicted a hearing 20 to 25 days after the petition is filed.

The reason there are so many different numbers floating around is because the rule simply does not say anything about a timeframe for elections. Certainly it is true that in the 10 percent of cases that are litigated—where the process is abused and delays are rampant—the rule likely will shorten the time period by instituting more efficient procedures. But as to the 90 percent of cases where there is voluntary agreement, the NLRB will continue to work with parties as it always has to arrive at a reasonable election date.

In connection with their undue speculation about timing of elections, supporters of this resolution have also argued that employers will not have enough time to communicate with workers under the rule. Because the rule does not actually address timing of an election in the great majority of cases, this is pure speculation as well. Moreover, it is well-known that election campaigns begin long before a petition is filed. If employers wish to mount an anti-union campaign, they will almost certainly do so when they learn a drive is happening. They will not wait until a petition is filed.

Similarly, my colleagues have argued that workers will only hear the union's side of the story under this rule. I must point out that it is employers who continue to have the right to hold ''captive audience'' meetings. They can hold meetings on work time where they can require workers' attendance, and they can browbeat workers about why they think unions are bad. Unions have no such access to a workplace. The playing field for communicating with workers is currently dramatically skewed in favor of employers. It will remain skewed in favor of employers after this rule goes into effect. All this rule does is to put some limits on those employers who would drag out elections to better exploit their communications advantage.

My colleagues on the other side argue that small businesses will have to confront election issues and familiarize themselves with the law in a very short timeframe. As I have said repeatedly, there is no reason to expect an election will occur any more quickly in the great majority of cases. Employers would have ample time to review the law. What the new rules do is to put small businesses on the same footing with large employers that can afford excessive, all-out litigation of preelection issues. The process is simplified so that all employers have to deal with straightforward and presumably cheaper procedures that give them all a fair and equal chance to address preelection issues.

My colleagues have argued that this rule creates an uncertain business climate. In fact, the rule does just the opposite. It creates a very predictable process because it applies uniform procedures designed to cut down on pointless litigation.

My Republican colleagues also suggest that this rule will cause more litigation because unions will have less incentive to reach voluntary agreements. But, in fact, unions will continue to have every incentive to have an agreement on election issues. Hearings still take time and resources even though they are now more streamlined than before. Unions would not want to undergo the expense, uncertainty, and delay of a hearing even though the process will be much improved under this rule. I am confident the great majority of cases will continue to be resolved by voluntary agreement.

Let me stress that this rule treats both sides the same way—the rule applies to elections to decertify a union as well as elections to certify one. Although it has been pointed out that there are certain times, such as the first year after a certification vote, when workers are not permitted to petition to decertify a union, the NLRB does provide adequate, defined time periods when workers are permitted to file a decertification petition. Workers' right to file such a petition during those time periods is well-established, and workers who don't want a union have a clear method to vote the union out.

Finally, it has been pointed out that the NLRB recently lost a court battle over its rule requiring a notice posting. But the reality is, the NLRB won this court battle in one district court and lost in another. One court upheld the core of the rule—that the NLRB can require a posting of workers' right to form a union. The DC Circuit Court of Appeals has now blocked the rule to avoid confusion over who has to implement the rule and who doesn't. That court likely won't issue a decision resolving this matter until the fall, but it has absolutely no bearing on the legality or legitimacy of the rule we are debating today. Indeed, the furor over notifying employees of their rights is a perfect example of the extremity of Republican opposition to worker rights. My colleagues have all spoken about the importance of workers being informed about the pros and cons of unionization, but they object to a simple poster that explains workers' rights under the law.

To conclude, this rule will cause no real change for the vast majority of businesses that approach the NLRB election process in good faith. It imposes no new requirements at all for parties who come to the process in good faith and negotiate an agreement. The rule simply addresses the small number of employers that abuse the NLRB election process and deliberately cause delay to buy themselves more time to bombard workers with an anti-union message. The rule also makes NLRB preelection litigation more efficient, saving government resources. It is a commonsense reform that deserves our full support. I strongly urge my colleagues to vote down the resolution disapproving of this NLRB rule.

The PRESIDING OFFICER. Who yields time?

Mr. HARKIN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. HARKIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HARKIN. Mr. President, how much time is remaining?

The PRESIDING OFFICER. There is 5 minutes for the majority and 3 minutes for the minority.

Mr. HARKIN. Mr. President, I will, obviously, yield to my good friend, Senator ENZI, for his closing remarks, but I again just want to point out that this ruling by the NLRB is imminently reasonable.

They went through rulemaking, as I have said before, one of the most transparent boards we have ever had in history. Rather than going through the adjudicative process, they went through rulemaking and a comment period. People were allowed to come in, and they even had an oral hearing which is not even required by the Administrative Procedure Act. Mr. Hayes was allowed due time for filing dissents. He chose not to do so for whatever reason. So everything was complied with. In fact, they bent over backwards to even do more than what the Administrative Procedure Act requires under rulemaking. So that is No. 1.

No. 2, the essence of the rule is eminently fair. It applies both to certification and decertification. There is no 10 days. I keep hearing about this 10 days. Mr. Hayes put that in his dissent, but there is nothing in the rule that requires a 10-day election. Nothing.

Lastly, again, what is this all about? I will say it one more time. This is what it is about, this is it: This is Mr. Martin Jay Levitt who wrote a book, ''Confessions of a Union Buster.'' He was a consultant to businesses that didn't want to have unions formed, and here is what he said in his book. Here is the way they should do things if they don't want to have a union:

> [C]hallenge everything . . . then take everything challenged to a full hearing . . . then prolong each hearing . . . appeal every unfavorable decision. If you make the union fight drag on long enough, workers . . . lose faith, lose interest, lose hope.

That is what it is about. It is about establishing a level playing field now so workers do indeed have their full rights—not a paper right but a full viable right to form a union and to have an election within a reasonable period of time.

Mr. President, I yield the floor. If my friend needs some more time, I yield him whatever time I have remaining.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. ENZI. Mr. President, I thank the chairman for the gift of time. There is nothing that is a greater gift than that.

Of course, I would like everyone to vote for my resolution of disapproval. This did not go through a process that was open and transparent. In fact, there was only one person who voted for this who was confirmed by the Senate. There were two people who voted for it. The other one lost, in a bipartisan way, the ability to be on that committee, so he was recess-appointed. So one person confirmed by the Senate is making this rule, and there was also

one person confirmed by the Senate who was against it. So it was a 1-to-1 tie. That would normally defeat anything.

The biggest thing that is being taken away in this, the biggest thing that collapsed the time down to a potential 10 days, the biggest thing is eliminating the preelection hearing. That is when the employees—the employees—get their fairness of finding out exactly who is going to be represented, who is going to be part of their unit, and get any of their questions answered about this organization that is about to receive their dues. It seems like the employees, for fairness, ought to have that right. It also ought to be for the employers to have that right, especially small businesspeople to have the time to get it together so they are not violating any of the National Labor Relations Board's rules that they can easily step into and be in big trouble during one of these elections.

I urge all of my colleagues to support this resolution of disapproval and stop the National Labor Relations Board's ambush election rule. This vote will send a message to the National Labor Relations Board that their job is not to stack the odds in favor of one party or another—under this administration or another—but to fairly resolve disputes and conduct secret ballot elections.

We have heard from several speakers on the other side of the aisle that this debate and vote are a waste of time. Debating the merits of this regulation is not a waste of time for the millions of small businesspeople and millions of employees who are going to be negatively impacted by it. In fact, once it goes into effect next week, I believe all of us will be hearing from unhappy constituents and asked what we did to stop this legislation, and we will be asked. The contention that we should not be able to raise concerns about the National Labor Relations Board's ambush election regulation before it goes into effect sounds a lot like what the National Labor Relations Board is trying to do to small businesses and employees who have questions about a certification election.

This regulation will take away the right to question whether the appropriate employees are in the bargaining unit or whether it includes supervisors and managers who should not be in the union or whether it leaves out a group of employees who should be in the union because they have similar jobs, and if they are excluded, they will lose ground against the newly unionized employees. This regulation takes away the right to present evidence and testimony at a preelection hearing and to file briefs supporting a position.

Because of the Congressional Review Act, we Senators have had the opportunity to present evidence and have debate. That is a privilege the NLRB is taking away from many small employers and employees, and that will lead to some suffering of the employees.

I urge my colleagues to vote for the motion to proceed to S.J. Res. 36. Again, it is a congressional privilege and we should take advantage of it. It is a chance to send a message that we want all of our boards to be fair and equal.

I yield back any remaining time.

The PRESIDING OFFICER. Time was yielded back.

VIOLENCE AGAINST WOMEN REAUTHORIZATION ACT OF 2011—MOTION TO PROCEED—Continued

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of the motion to proceed to S. 1925.

The Senator from Arizona.

POSTAL REFORM

Mr. MCCAIN. Mr. President, I want to discuss one of the amendments that I believe we will be voting on later, and basically what it does is it establishes a BRAC-like process in order to consolidate redundant, underutilized, and costly post offices and mail processing facilities.

We found over the years that Congress was politically unable to close a base or a facility that had to do with the military, so we adopted a process where a commission was appointed, those recommendations to consolidate excess and underutilized military bases were developed, and Congress was given an up-or-down vote. This is sort of based on that precedent.

The bill before us clearly doesn't offer any solutions. According to the Washington Post editorial:

> The 21st Century Postal Service Act of 2011, proposed by Senators Joseph Lieberman and Susan Collins and passed last week by the Senate Committee on Homeland Security Government Affairs, is not a bill to save the U.S. Postal Service. It is a bill to postpone saving the Postal Service.

I agree with the Washington Post. I usually do. The Service's announcement that they lost $5.1 billion in the most recent fiscal year was billed as good news. That is how dire the situation is, the fact that they only lost $5.1 billion.

> The Collins-Lieberman bill, which transfers $7 billion from the Federal Employee Retirement System to the USPS—to be used to offer buyouts to its workers and paying down debts—can stave off collapse for a short time at best.
>
> Nor do the other measures in the bill offer much hope. The bill extends the payment schedule for the Postal Service to prefund its employee retirement benefits from 10 to 40 years. Yes, the funding requirement is onerous, but if the USPS cannot afford to pay for these benefits now, what makes it likely that it will be able to pay later, when mail volume has most likely plummeted further?
>
> The bill also requires two more years of studies to determine whether a switch to five-day delivery would be viable. These studies would be performed by a regulatory body that has already completed a laborious inquiry into the subject, a process that required almost a year.

The Washington Post goes on to say:

> This seems a pointless delay, especially given a majority of Americans support the switch to five-day delivery.

And finally they go on and say:

> There is an alternative—a bill proposed by Rep. Darrell Issa that would create a supervisory body to oversee the Postal Service's finances and, if necessary, negotiate new labor contracts. The bill . . . is not perfect, but offers a serious solution that does not leave taxpayers on the hook.

So we now have legislation before us that makes it harder, if not impossible, for the Postal Service to close post offices and mail processing plants by placing new regulations and limitations on processes for closing or consolidating mail processing facilities, a move in the wrong direction. It puts in place significant and absolutely unprecedented new process steps and procedural hurdles designed to restrict USPS's ability to manage its mail processing network.

Additionally, the requirement to redo completed but not implemented mail processing consolidation studies will ultimately prevent any consolidations from occurring this calendar year.

What we have to realize in the context of this legislation is that we now have a dramatic shift, technologically speaking, as to how Americans communicate with each other. That is what this is all about. We now have the ability to communicate with each other without sitting down with pen and paper, just as we had the ability to transfer information and knowledge by means of the railroad rather than the Pony Express.

We now have facilities that are way oversized and unnecessary, and we are facing a fiscal crisis. According to the Postal Service:

> The current mail processing network has a capacity of over 250 billion pieces of mail per year when mail volume is now 160 billion pieces of mail.

So now we have overcapacity that is nearly double what is actually going to be the work the Postal Service does, and all trends indicate down. More and more Americans now acquire the ability to communicate by text message, Twitter, and many other means of communications. So to somehow get mired into while we cannot close this post office, we have to keep this one open, we have to do this—we have to realize it in the context that a large portion of the U.S. Postal Service's business is conducted by sending what we call ''junk mail'' rather than the vital ways of communicating that it was able to carry out for so many years.

In addition, the Postal Service has a massive retail network of more than 32,000 post offices, branches, and stations that has remained largely unchanged despite declining mail volume and population shifts. The Postal Service has more full-time retail facilities in the United States of America than Starbucks, McDonald's, UPS, and FedEx combined. And according to the Government Accountability Office, approximately 80 percent of these retail facilities do not generate sufficient